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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY
07/663,145	03/01/91	DAVIES	M 2954/0641
			EXAMINER
			LEWIS, A
DARBY & DARBY 805 THIRD AVENUE NEW YORK, NY 10022			ART UNIT 3307 10
			DATE MAILED: 08/27/9

This is a summary of the examination of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☐ This application has been examined ☒ Responsive to communication filed on 5/4/92 ☐ This action is in response to a shortened statutory period for response to this action is set to expire 3 month(s), 8 days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|--|--|
| <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | <input type="checkbox"/> Notice of Informal Patent Application, Form 1 |
| <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | <input type="checkbox"/> |

Part II SUMMARY OF ACTION

- ☒ Claims 1-26 are pending in: Of the above, claims 22-26 are withdrawn from
- ☐ Claims have been amended
- ☐ Claims are allowed
- ☒ Claims 1-21 are rejected.
- ☒ Claims 8-12, 16, 17 are objected to
- ☐ Claims are subject to restriction or election
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on _____ Under 37 C.F.R. 1.84, they are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation)
- ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been filed in parent application, serial no. _____; filed on _____
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 O.G. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

Serial No. 663,145

-2-

Art Unit 3307

Claims 1-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the preamble indicates a subcombination of an inhalation device but the body of the claim contains at least one positive recitation of structure (i.e. "...peeling the members apart...") which indicates that the combination (i.e. inhalation device and peelable members of medicament) is being claimed.

This constitutes an inconsistency between the language in the preamble and the language in a certain portion(s) of the body of the claim which renders the scope of the claim unclear. It is not clear from the claim language exactly what applicant intends to be the invention. Applicant is hereby required to clarify (in an amendment to the claim language) exactly what invention the claims are intended to be drawn to.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102

Serial No. 663,145

-3-

Art Unit 3307

of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-7,13-15,18-21 are rejected under 35 U.S.C. § 103 as being unpatentable over Hodson et al. (WO 90/13328) in view of Fortenberry.

Hodson et al. disclose an inhalation device (1) for use with a medicament pack (8) which holds at least one container for medicament in powder form. The device also includes an opening station (9) of Fig. 3 for said at least one container, and an outlet (4,5) communicating with the opened container through which a user can inhale medicament in powder form.

The difference between Hodson et al. and claim 1 is a container for medicament in the form of two members peelably secured to one another.

Fortenberry (fig. 11) teaches a medicament container (50') in the form of two members (96,98) peelably secured to one another.

It would have been obvious to substitute the medicament container (50') of Fortenberry for the medicament container (11,12) of Hodson et al. as a functionally equivalent substitution, one medicament container for another.

As to claim 2, Fortenberry teaches that the two members (96,98) are two sheets.

Serial No. 663,145

-4-

Art Unit 3307


As to claims 3-7, applicant is referred to Fig. 11 of Fortenberry which illustrates a base sheet (96) with a plurality of pockets therein, and a driving means (70) for pulling the lid sheet (98) and base sheet apart at opening station (40').

As to claims 13-15,18-21, applicant is referred to (76) for indicator means and Fig. 11 which also shows toothed wheels for engaging the medicament container.

Claims 8-12,16,17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Aaron J. Lewis at telephone number (703) 308-0858.

Aaron J. Lewis
August 27, 1992


AARON J. LEWIS
EXAMINER
ART UNIT 337